IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12652 of 2001

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNAGAR DISTRICT PANCHAYAT

Versus

SMT. NIRMALABEN N. DAVE

Appearance:

MR HS MUNSHAW for Petitioner

MR JF SHAH for Respondent

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 16/07/2004

ORAL JUDGEMENT

1.0 In this petition the petitioner challenged the order dated 20th June 2001 passed by the Gujarat Civil Service Tribunal, Gandhinagar in Appeal No.383/1998.

2.0 The respondent was appointed as Junior Clerk in Bhavnagar District School Board from 1.8.1956 and she was transferred to Bhavnagar District Panchayat as Junior

Clerk. The respondent was promoted to the post of Senior accounts Clerk on 16.6.1970 and thereafter to the post of Deputy Accountant. The respondent retired from service on 28th February 1989.

2.1 Thereafter the respondent made representation before the authorities praying for deemed date of promotion with effect from 27.8.1970 on the ground that her junior Mr. Balim and others were granted such benefit. Her representation was rejected on 2nd January 1998.

2.2 The respondent, therefore, approached Gujarat Civil Service Tribunal, Gandhinagar by way of filing Appeal No.383/98. The Tribunal by order dated 20th June 2001 directed the petitioner to give deemed date of promotion to the respondent with effect from 27th August 1970. It is against the said order the present petition has been filed.

3.0 Learned counsel for the petitioner submitted that the channel of promotion of the respondent and Mr. Balim was different. He submitted that Mr. Balim had opted for clerical cadre while the respondent had opted for Accounts cadre and as their channel of promotion was altogether different, the respondent cannot claim the benefit extended to Mr. Balim. Mr. Munshaw pointed out that the cases of Mr. Chauhan and Mr. Shah were wrongly relied upon by the Tribunal as they were from different authorities. He submitted that therefore the respondent cannot compare with them for deemed date of promotion.

4.0 Mr. J.F. Shah, learned counsel for the respondent submitted that in the common seniority list published for Junior Clerks in 1969 the respondent was at serial no.42, Shri Chauhan was at serial no.80, Shri Trivedi was at serial no.90 and Shri Balim was at serial no.43. The respondent was senior to all these persons as on 1.4.19963. The respondent was promoted as senior clerk on 16.6.1970 whereas Shri Trivedi and Shri Chauhan were junior clerk in 1960 and they were promoted as senior Clerks in the year 1972. Therefore, even in the cadre of Senior Clerk they were junior to respondent. In paras 10 and 16 of the order of the Tribunal it is stated as under:

> "10. Admittedly Shri Trivedi and Shri Chauhan were juniors to the appellant but appellant is staff of School Board while the two are of Local Board. Shri Balim of School Board was given promotion on 21.8.70 as Senior Account Clerk. It is denied that Shri Balim refused promotion. He

was later reverted in 1971. He gave his option for common cadre and was then promoted as Senior Clerk in 1981. He was then promoted as Deputy Taluka Development Officer in 1982. It is admitted that Circular of Government on 9.7.1971 was quashed by Hon. High Court. Shri Balim is Aval Karkoon from 1982 while appellant is Deputy Accountant in 1977. They both are of School Board but their cadres are different. Shri Balim and Shri Trivedi opted for administrative cadre and appellant cannot get the benefit of as Shri Balim."

"16. Admittedly the appellant is senior to all these persons and appellant has a strong case for seniority and deemed date. The point of departmentwise seniority is bad."

Thus, it is clear that the respondent was senior to the above three persons and therefore there was no reason for not considering the case of the respondent.

5.0 Apart from that the order in question was passed by DDO in his capacity as quasi judicial authority sitting in appeal under statutory rules of 1977 and since the DDO was a party in his capacity as a statutory authority, the Panchayat could not have preferred this petition. Even on this ground also the petition cannot be entertained.

6.0 As regards the contention of Mr. Munshaw that Mr. Balim was given deemed date because of the fact that the Tribunal had passed orders in his favour. This has come for the first time by way of ground in this petition without producing the judgement of the Tribunal on record. It appears that this contention was not raised before the Tribunal also.

6.1 In any case, in view of the fact that the respondent was senior to all other persons, the petitioner should have accepted the said decision. Under the circumstances, when Balim was given deemed date of promotion there was no reason to deny such benefit to the respondent. The Tribunal has recorded a finding of fact that the dates of joining service, the dates of promotion, the seniority list are not disputed. The Tribunal has also rightly come to the conclusion that length of service to a particular class, category or grade is the relevant criteria for the purpose of counting the period with respect to length of service for the purpose of determining seniority. When the junior

persons were promoted, the authority ought to have given deemed date to the respondent also. Therefore, there is clear discrimination against the respondent.

7.0 In view of the above facts and circumstances of the case the order of the Tribunal is just and proper and in consonance with the law laid down by this Court and the Apex Court and does not warrant any interference in this petition. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]
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